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Supreme Court, U.S.
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No. 06-24

IN THE
SUPREME COURT OF THE UNITED STATES

STEPHEN M VAN DE BERG (a trust);
Petitioner

v.

COMMISSIONER OF REVENUE;
Respondent

PETITION FOR REHEARING

Stephen M. Van De Berg, Trustee
STEPHEN M VAN DE BERG (a trust)
c/o P.O. Box 138
Convent Station, New Jersey 07961
(201) 450-4225

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING

Petitioner, STEPHEN M VAN DE BERG (a trust), respectfully petitions this court for a rehearing.

STATEMENT OF THE CASE

Internal Revenue Service (hereinafter "Respondent") issued a bogus Notice of Deficiency (hereinafter "NOD") specifically addressing it only to Petitioner. To contest said bogus NOD Petitioner, through its fiduciary, filed suit in tax court. Contrary to the material facts of the case, the tax court accepted Respondent's false allegation that the Petitioner was not the person named on said NOD and summarily dismissed the case without trial incorrectly alleging the wrong party filed the case. Petitioner timely appealed the Tax Court's ruling to the 3rd Circuit Court of Appeals, showing: the tax court erred, the facts of the case prove Respondent's allegation is false and Social Security Administration's records further prove the same. Contrary to Tax Court Rule 24(b), Respondent's response contested Petitioner proceeding on appeal without an attorney. The appeals court accordingly dismissed the appeal for failure to prosecute alleging Petitioner was not represented by an attorney. However, said Rule 24(b) authorizes Trusts to be represented by their Fiduciaries in such proceedings; therefore, Petitioner petitioned this court for a writ of certiorari, which was summarily denied; making these proceedings a mockery of justice from the tax court's dismissal to this court's denial.

> *"The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action and to render decrees without any hearing whatever is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."*
>
> *Hovey v. Elliott*, 167 U.S. 409, 413-414

THIS PETITION FOR REHEARING MUST BE GRANTED EX DEBITO JUSTITIAE

Justice requires this court to exercise its supervisory authority over the appeals court when, on appeal to this court, the appeals court's errs are made apparent, especially when such errs are committed in violation of the Constitution, the rules of court and due process of law. This requirement becomes even more evident when such errs authorize or encourage further violations and or denials of the same. As stated in *Hovey v. Elliott (ibid.)* all this court need do to make a mockery of and strip the judicial system of the "*attribute(s) of justice upon which the exercise of judicial power necessarily depend*" is deny the writ of certiorari requested, which it already has done in error. Thus, ex debito justitiae (at the debt of justice) this court must grant this Petition for the following causes:

Cause 1: This court's failure to enforce court rules denied Petitioner's constitutionally secured right to due process of law and access to the courts.

The Tax Court Rule 24(b) authorizes a Trust's fiduciary to represent the Trust in these proceedings.

In *Osborn v. President, Directors & Co. of Bank*, 22 U.S. 738, 829-831 (1824), the Supreme Court conducted an in-depth analysis on representation of corporations by attorneys. Whereas, in trial proceedings trusts are generally recognized as entities of a capacity similar to corporations, the following excerpts from *Osborn* are relevant to this case:

> "*It is admitted that a corporation can only appear by attorney ... Natural persons may appear in Court, either by themselves, or by their attorney. But no man has a right to appear as the attorney of another, without the authority of that other.*"

The court recognized this applies also to corporations. The court then addresses licensed attorneys:

> "*The case of an attorney at law, an attorney for the purpose of representing another in Court, and prosecuting or de-*

fending a suit in his name, is somewhat different. The power must indeed exist, but its production has not been considered as indispensable. Certain gentlemen, first licensed by government, are admitted by order of Court, to stand at the bar, with a general capacity to represent all the suitors in the Court."

"The argument supposes some distinction, in this particular, between a natural person and a corporation; but the Court can perceive no reason for this distinction. A corporation, it is true, can appear only by attorney, while a natural person may appear for himself. But when he waives this privilege, and elects to appear by attorney, no reason is perceived why the same evidence should not be required, that the individual professing to represent him has authority to do so"

At this time in the American history there was no requirement compelling all attorneys to be so licensed, rather attorneys were regularly admitted into court by court order recognizing attorneys to represent corporations and others in accord with the represented parties request. In this instant case that authority was granted to Petitioner's fiduciary through Tax Court Rule 24(b); which rule is applicable today even though attorney representation in the courts is now generally restricted to practicing licensed attorneys.

It is quite apparent that the fiduciary is not the trust, yet said Rule 24(b) authorizes the fiduciary to represent the Trust in the tax court without any other attorney.

"If this usage ought to be altered, it should be a rule to operate prospectively, not by the reversal of a decree pronounced in conformity with the general course of the Court, in a case in which no doubt of the legality of the appearance had ever been suggested."

Accordingly, if in this case Tax Court Rule 24(b) is to be altered in its application and Petitioner is not going to be allowed its representation by its fiduciary on appeal this alteration of the application of the rule should be announced by the

court in the rules not by surprise when the appellate court reverses this court's decree made apparent in the rule; this is especially certain in consideration of the *Osborn* rule's recognition that the same rules applying to attorney representation should be followed on appeal that were established for the trial court, which follows:

"*since the practice has, in fact, been the same in both Courts, an appellate Court ought, we think, to be governed in both by the same rule.*" *Osborn v. Bank, ibid.*

Considering the language of Rule 24(b) provides: ***"An estate or trust may be represented by a fiduciary thereof"***, which matter was specifically discussed in the tax court and Petitioner was allowed to so proceed by its fiduciary's representation.

Therefore, according to *Osborn's* rule that the '*appellate Court is to be governed by the same rule*', denying Petitioner access to the appellate court for continuing to follow said Rule 24(b) denies Petitioner constitutionally secured access to the court, which violates Petitioner's constitutionally secured due process of law.

Osborn makes it clear in matters dealing with required representation that the appellate court must be governed by the same rules as the tax court; accordingly, Petitioner's Petition and pleadings in the tax court and on appeal showed Petitioner was lawfully represented by its fiduciary as Petitioner's chosen court authorized representative.

Petitioner's petition for a writ of certiorari showed the following:

1. Petitioner was represented by its fiduciary in tax court and on appeal;
2. The matter was even raised and discussed in the tax court and Petitioner was allowed to so proceed in tax court by the representation of its fiduciary;
3. Setting a higher standard on appeal than at trial denies Petitioner its right of access to the courts and its right to due process of law;

4. If the Appeal would have been allowed it would have to have reviewed the case de novo and in the manner of accepting all facts of the case as they were presented by Petitioner, acknowledging that Social Security Administration's records can be summoned and will either prove or disprove Petitioner's claim as to the identity of the person named on the NOD in question;

Wherefore, to deny Petitioner's Petition for Writ of Certiorari in the face of these matters before this court denies this court's support of: rules for the tax court, the standards it has set in case law (like *Osborn*) and the Constitution's guarantee of access to the court and due process of law.

In failing to use its supervisory power over the appeals court, this court mocks justice and denies access to the courts against Petitioner, which denial is a separate constitutional violation of due process of law;

Wherefore, this court should reverse its own error and grant a rehearing.

Cause 2: The issue of representation by an attorney on appeal should be irrelevant when the Standard for Review regarding such an appeal requires it be done by trial de novo.

The issue of whether or not Petitioner is represented by a licensed attorney in filing its claim to the appellate court should be irrelevant considering that the Standard for Review of summarily dismissal cases requires a review de novo.

Such a de novo review requires application of the rules of the trial court; which rules at Tax Court Rule 24(b) authorize Petitioner to proceed without an attorney, as follows: ***"An estate or trust may be represented by a fiduciary thereof"***.

Therefore, this court should acknowledge this fact by reversing its decision to deny and instead at the debt of justice grant this Petition for a rehearing.

Cause 3: This court erred in failing to grant a de novo review of the tax court's summary dismissal of the underlying action

Appellate review of summary dismissals requires a de novo review (*East Wind Indus. v. United States*, 196 F.3d 499 (1999)); such a review needs to be done according to the Standard for Review this court has set, which is as follows:

1. "*Especially when considering a Summary Judgment Motion, a plaintiff's case must be heard in the light most favorable to plaintiff*" *Cruz v. Beto*, 405 U.S. 319,322 (1972); *Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994).
2. "*In reviewing on certiorari a decision granting a motion to dismiss, the United States Supreme Court must accept as true all the factual allegations in the complaint.*" *Leatherman v. Tarrant County Narcotics Intelligence*, 507 U.S. 163;
3. "[the] *Complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim for relief*"; *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957);

Said Standard for Review only allows summary dismissal if it appears beyond doubt that Petitioner can prove no set of facts in support of its claim; however, Petitioner can easily prove all of its claims.

The simplest claim of all to prove is that said bogus NOD was issued specifically to Petitioner and to no other person.

Said NOD is a matter of record; therefore, it speaks for itself and shows Petitioner is the only party addressed on it.

In a trial of the facts, Petitioner would have summoned Social Security Administration's record, which clearly shows Petitioner is a trust and is the only person with the name and Taxpayer Identification Number (hereinafter "TIN") shown on said NOD;

Wherefore, the court is either required to accept the facts as Petitioner presented them as true, which means they must remand the case for trial, or the court must provide Petitioner

with the opportunity to prove said NOD was addressed only to it, which can easily be done by summoning Social Security Administration's records; anything less denies justice to Petitioner and mocks justice by not supporting this court's own rules, not the least of which is its Standard for Review;

Thus, if the courts were to have followed this court's rules regarding summary dismissals the issue of proceeding by attorney in the appellate court would be moot.

This court can see this simple fact from the record before it regarding the trial court, if it will only look at this Petition.

Thus, the debt of justice cries forth from these proceedings and demands this court exercise its supervisory power, follow its own rules and grant this request for a rehearing so that justice may be served, this case may be heard and the trial of the facts will allow justice to be satisfied.

Wherefore, this court should reverse its error and grant a rehearing.

Cause 4: This court's denial of a writ of certiorari violates the Constitution's security of the rights of due process of law and access to the courts

What is the point of having a Supreme Court that sets a Standard for Review if this court will not compel the lower courts to follow it?

What is the point of having a Constitutional requirement that compels courts to follow due process of law if this court will not compel the lower courts to follow it?

In fact, what is the point of having a Supreme Court if it refuses to exercise its supervisory power to compel the lower courts to follow the law at the debt of justice?

The standard of review in part states, "[the] *Complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim for relief*"; *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957);

Congress and the Social Security Administration have published, 'the name and TIN combination were created to uniquely identify a specific taxpayer.'

In spite of Respondent's unsupportable false allegation that Petitioner was not the person named on said NOD, which the tax court based its errant summary dismissal on, anyone (including this court) can see, the document (NOD) speaks for itself showing only one specific name and TIN combination; thus, it uniquely shows who it was addressed to. That name and TIN combination uniquely identify Petitioner.

With no further evidence, the record itself proves this. The only question then is, 'Who is the actual person so named and numbered?' A summons of Social Security Administration's records proves that as well.

Thus this court, from the evidence alone can see for itself that a trial of the facts can easily either prove Petitioner is the correct party to bring this suit or not.

The Standard for Review requires that Petitioner is given that opportunity; anything less denies the constitutionally secured right to due process of law and is a mockery of justice.

Whereas, said NOD and all other documents in the case speak for themselves, along with the material facts of the case, and demonstrate said NOD was issued only to Petitioner; and,

Whereas, this whole issue could be easily resolved with one summons of Social Security Administration's records, which prove the identity of the person named in said NOD; and,

Whereas, Respondent did not offer any evidence to support its spurious allegation;

Therefore, this court's error in denying a writ of certiorari further deprived Petitioner of its constitutionally secured rights of access to the courts and due process of law.

Cause 5: In the face of the Causes shown above, denying petitioner a writ of certiorari, implies prejudice against unlicensed attorneys

Whereas, no evidence exists to support Respondent's spurious allegation regarding the party to whom the NOD was addressed;

Whereas, the identity of the party addressed on the NOD in question is uniquely clarified by the name and TIN combination, which can be easily proven with a simple summons of the record from Social Security Administration; which is a matter for a trial of the facts;

Whereas, the Standard for Review denies the possibility of a summary dismissal when a controversy of such a factual question is elementary to a case before a trial court;

Whereas, the Causes shown above show the lack of attorney issue as alleged fails to follow the rules of court or due process of law;

Whereas; the issue of whether or not Petitioner is represented by a licensed attorney in filing its claim to the appellate court is irrelevant in the face of the overwhelmingly obvious fact that the case was dismissed from the trial court by way of a summary dismissal, which requires a review de novo and the rules of the trial court, which allow Petitioner to proceed without an attorney in such a review clearly apply on such an appeal; even if they did not, the fact remains, the case was dismissed when there is a plain and obvious ability in Petitioner to either prove the facts of the case or not, which by rule of the Supreme Court bars summary dismissal; still the courts (tax, appeal and Supreme) each denied access for no reasonable or apparent lawful cause;

Therefore, we are left to wonder why?

Could it possibly be the courts are denying access because there is no licensed attorney involved in the presentation of these proceedings?

As demonstrated above, this court, in the exercise of its supervisory power, should have recognized that Petitioner's fiduciary is akin to Petitioner's attorney in this case, whose representation was authorized in the Tax Court Rules;

The courts in this matter have been treating Petitioner as if it were a pro-se litigant and are denying Petitioner access to the courts on appeal, expressing a bias against attorneys who are not government licensed by acting as if Petitioner's fiduciary is non-existent; seriously undermining its authority and

calling into question the court's dedication to providing justice for all.

Therefore, this court should correct its error and demonstrate that this court is operated not by prejudice but at the debt of justice in support of: the Constitution, the rules of court and the necessities of due process of law; accordingly this court should grant this Petition for a rehearing and issue the Writ of Certiorari.

CONCLUSION

Wherefore, in consideration at least of the causes shown above and at the debt of justice this court should reverse its error and uphold the Constitution, the rules of the tax court, the Standard for Review of summary dismissal cases and its past rules by granting a rehearing in this case and issue the Writ of Certiorari.

Therefore, in consideration of the causes shown above in this petition, Petitioner now formally requests this court to grant this petition for rehearing at the debt of justice.

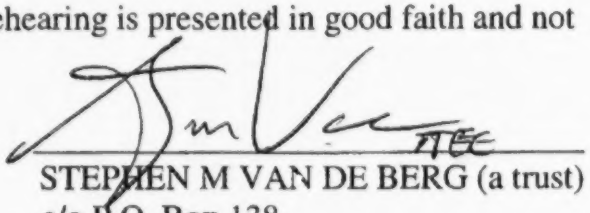
Respectfully submitted,

STEPHEN M VAN DE BERG (a trust)
c/o P.O. Box 138
Convent Station, New Jersey 07961
(201) 450-4225

CERTIFICATION

This Petition for Rehearing is restricted to the grounds specified in Rule 44, paragraph 2 of the Rules of the Supreme Court of the United States.

This Petition for Rehearing is presented in good faith and not for delay.



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